

HOUSE BILL No. 1066

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-1; IC 29-3; IC 30-1-5-1; IC 34-45-2-4.

Synopsis: Various probate and trust matters. Reduces the time for giving notice to creditors from three months to one month. Reduces the period for barred claims from one year to nine months. Changes various probate deadlines and periods from five months to three months, including deadlines concerning claims and filings to enforce liens regarding real estate. Eliminates the requirement that a newspaper notice be published when actual notice to the last known address is given. Eliminates the actual notice and the hearing requirement in a supervised estate when all persons entitled to share in the final distribution of the estate waive notice and consent to the final account and distribution. Allows a personal representative to provide notice by publication if a person entitled to share in the residue of the estate cannot be located. Increases the allowance that a surviving spouse is entitled to receive from a decedent's estate from \$15,000 to \$25,000 with respect to decedents who die after June 30, 1999. Provides that the
(Continued next page)

Effective: July 1, 1999.

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January 6, 1999, read first time and referred to Committee on Judiciary.



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Digest Continued

allowance may be claimed against the personal property of the decedent or a residence that is a part of the decedent's estate, or a combination of both. Provides that if the personal property of the decedent and a residence that is a part of the decedent's estate are worth less than \$25,000, the difference may be claimed against real estate in the decedent's estate. Specifies that: (1) when there is no conflict of interest between the guardian of the estate of a protected person and the protected person, an order binding the guardian of the estate binds the protected person; and (2) orders binding a guardian of the person bind the ward of a guardian of the estate, if a guardian of the estate has not been appointed. Removes language that causes an ambiguity. Provides that under certain circumstances, a devisee in a protected person's will may elect to: (1) receive the value of property specifically devised in the will but transferred by the guardian before the protected person's death as a general devise; or (2) receive the proceeds of the sale or transfer as a specific devise. Increases from \$5,000 to \$10,000 the maximum amount of debt owed to a minor and the maximum value of property belonging to a minor that may be paid or delivered to a person having the care and custody of the minor without giving a bond or an order of the court. Expands the ability of a trustee to invest in life insurance contracts by removing provisions limiting the trustee's expenditures in annual premiums to 25% of the trust income in the preceding calendar year. Provides that a person who is a necessary party to the issue or record and whose interest is adverse to an estate is a competent witness as to matters against the estate in: (1) a proceeding to contest the validity of a will; (2) a proceeding to contest the validity of a trust; or (3) any proceeding after the person has made a prima facie case by other evidence. (Current law provides that the person is not a competent witness as to matters against the estate in a suit or proceeding: (1) in which an executor or administrator is a party; (2) involving matters that occurred during the lifetime of the decedent; and (3) where a judgment or allowance may be made or rendered for or against the estate represented by the executor or administrator.) (The introduced version of this bill was prepared by the probate code study commission.)

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1066

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-4-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 1. The surviving spouse of a
3 decedent who was domiciled in Indiana at his death is entitled from the
4 estate to an allowance of ~~fifteen~~ **twenty-five** thousand dollars
5 ~~(\$15,000)~~. **(\$25,000)**. The allowance may be claimed against the
6 personal property of the estate or a residence ~~of the surviving spouse;~~
7 **that is a part of the decedent's estate**, or a combination of both. If
8 there is no surviving spouse, the decedent's children who are under
9 eighteen (18) years of age at the time of the decedent's death are
10 entitled to the same allowance to be divided equally among them. If
11 **there is the personal property and a residence that is a part of the**
12 **decedent's estate are** less than ~~fifteen~~ **twenty-five** thousand dollars
13 ~~(\$15,000)~~ **(\$25,000)** in ~~personal property in the estate and residence of~~
14 ~~the surviving spouse; value,~~ the spouse or decedent's children who are
15 under eighteen (18) years of age at the time of the decedent's death, as
16 the case may be, are entitled to any real estate of the estate to the extent

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necessary to make up the difference between the value of the personal property plus the residence ~~of the surviving spouse that is a part of the decedent's estate~~ and ~~fifteen~~ **twenty-five** thousand dollars ~~(\$15,000)~~ **(\$25,000)**. The amount of that difference is a lien on the remaining real estate. An allowance under this section is not chargeable against the distributive shares of either the surviving spouse or the children.

SECTION 2. IC 29-1-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

(b) The notice required under subsection (a) shall be published in a newspaper of general circulation, printed in the English language and published in the county where the court is located, once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the administration of the estate within thirty (30) days after the publication. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.

(c) The notice required under subsection (a) shall be served by mail on each heir, devisee, legatee, and known creditor whose name and address is set forth in the petition for probate or letters. The personal representative shall furnish sufficient copies of the notice, prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

(d) The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

- (1) whose name is not set forth in the petition for probate or letters under subsection (c);
- (2) who is known or reasonably ascertainable within ~~three (3) months~~ **one (1) month** after the first publication of notice under subsection (a); and
- (3) whose claim has not been paid or settled by the personal representative.

The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

(e) Notice under subsection (d) shall be served within ~~three (3) months~~ **one (1) month** after the first publication of notice under subsection (a) or as soon as possible after the elapse of ~~three (3) months~~ **one (1) month**. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d) within ~~three~~

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(3) ~~months~~ **one (1) month** after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes ~~the period specified under IC 29-1-14-1 and~~ an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than ~~one (1) year~~ **nine (9) months** after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____ was, on the ____ day of _____, 19 __, appointed personal representative of the estate of _____, deceased, who died on the ____ day of _____, 19 __.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within ~~five (5)~~ **three (3)** months from the date of the first publication of this notice, or within ~~one (1) year~~ **nine (9) months** after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at _____, Indiana, this ____ day of _____, 19 __.

CLERK OF THE _____ COURT
FOR _____ COUNTY, INDIANA

SECTION 3. IC 29-1-7-7.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7.5. (a) A personal representative shall exercise reasonable diligence to discover the reasonably ascertainable creditors of the decedent within ~~three (3)~~ **months one (1) month** of the first publication of notice under section 7 of this chapter.

(b) A personal representative is considered to have exercised reasonable diligence under subsection (a) if the personal representative:



(1) conducts a review of the decedent's financial records that are reasonably available to the personal representative; and

(2) makes reasonable inquiries of the persons who are likely to have knowledge of the decedent's debts and are known to the personal representative.

(c) A personal representative may file an affidavit with the clerk of the court stating that the personal representative has complied with the requirements of subsection (b). In addition, a personal representative may petition the court for an order declaring that:

(1) the personal representative has complied with the requirements of subsection (b); and

(2) any creditors not known to the personal representative after complying with the requirements of subsection (b) are not reasonably ascertainable.

(d) If a personal representative complies with the requirements of subsection (b), the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and creditors not discovered are presumed not reasonably ascertainable. The presumptions may be rebutted only by clear and convincing evidence.

SECTION 4. IC 29-1-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 17. Any interested person may contest the validity of any will in the court having jurisdiction over the probate of the will within ~~five (5)~~ **three (3)** months after the date of the order admitting the will to probate by filing in the court the person's allegations in writing verified by affidavit, setting forth:

(1) the unsoundness of mind of the testator;

(2) the undue execution of the will;

(3) that the will was executed under duress or was obtained by fraud; or

(4) any other valid objection to the will's validity or the probate of the will.

The executor and all other persons beneficially interested in the will shall be made defendants to the action.

SECTION 5. IC 29-1-7.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than ~~five (5)~~ **three (3)** months after the date of ~~original appointment of a general personal representative for the estate; first published notice to creditors under~~



1 **IC 29-1-7-7(b)**, a verified statement stating that the personal
 2 representative, or a prior personal representative, has done the
 3 following:

4 (1) Published notice to creditors as provided in IC 29-1-7-7(b),
 5 and that the first publication occurred more than ~~five (5)~~ **three (3)**
 6 months prior to the date of the statement.

7 (2) Provided notice to creditors as required under IC 29-1-7-7(c)
 8 and IC 29-1-7-7(d).

9 (3) Fully administered the estate of the decedent by making
 10 payment, settlement, or other disposition of all claims which were
 11 presented, expenses of administration and estate, inheritance, and
 12 other death taxes, except as specified in the statement. If any
 13 claims remain undischarged, the statement shall:

14 (A) state whether the personal representative has distributed
 15 the estate, subject to possible liability, with the agreement of
 16 the distributees; or

17 (B) detail other arrangements which have been made to
 18 accommodate outstanding liabilities.

19 (4) Executed and recorded a personal representative's deed for
 20 any real estate owned by the decedent.

21 (5) Distributed all the assets of the estate to the persons entitled
 22 to receive the assets.

23 (6) Sent a copy of the statement to all distributees of the estate
 24 and to all creditors or other claimants of whom the personal
 25 representative has actual knowledge whose claims are neither
 26 paid nor barred and has furnished a full account in writing of the
 27 personal representative's administration to the distributees whose
 28 interests are affected.

29 (7) Provided the court with the names and addresses of all
 30 distributees, creditors, and claimants to whom the personal
 31 representative has sent a copy of the statement under subdivision
 32 (6).

33 (b) If no proceedings involving the personal representative are
 34 pending in the court three (3) months after the closing statement is
 35 filed, the appointment of the personal representative terminates and the
 36 estate is closed by operation of law.

37 **SECTION 6. IC 29-1-14-1 IS AMENDED TO READ AS**
 38 **FOLLOWS [EFFECTIVE JULY 1, 1999]:** Sec. 1. (a) Except as
 39 provided in IC 29-1-7-7, all claims against a decedent's estate, other
 40 than expenses of administration and claims of the United States, the
 41 state, or a subdivision of the state, whether due or to become due,
 42 absolute or contingent, liquidated or unliquidated, founded on contract



or otherwise, shall be forever barred against the estate, the personal representative, the heirs, devisees, and legatees of the decedent, unless filed with the court in which such estate is being administered within:

(1) ~~five (5)~~ **three (3)** months after the date of the first published notice to creditors; or

(2) three (3) months after the court has revoked probate of a will, in accordance with IC 29-1-7-21, if the claimant was named as a beneficiary in that revoked will;

whichever is later.

(b) No claim shall be allowed which was barred by any statute of limitations at the time of decedent's death.

(c) No claim shall be barred by the statute of limitations which was not barred at the time of the decedent's death, if the claim shall be filed within:

(1) ~~five (5)~~ **three (3)** months after the date of the first published notice to creditors; or

(2) three (3) months after the court has revoked probate of a will, in accordance with IC 29-1-7-21, if the claimant was named as a beneficiary in that revoked will;

whichever is later.

(d) All claims barrable under subsection (a) shall be barred if not filed within ~~one (1) year~~ **nine (9) months** after the death of the decedent.

(e) Nothing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, or other lien upon property of the estate.

(f) Nothing in this section shall affect or prevent the enforcement of a claim for injury to person or damage to property arising out of negligence against the estate of a deceased tortfeasor within the period of the statute of limitations provided for the tort action. A tort claim against the estate of the tortfeasor may be opened or reopened and suit filed against the special representative of the estate within the period of the statute of limitations of the tort. Any recovery against the tortfeasor's estate shall not affect any interest in the assets of the estate unless the suit was filed within the time allowed for filing claims against the estate. The rules of pleading and procedure in such cases shall be the same as apply in ordinary civil actions.

SECTION 7. IC 29-1-14-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. No action shall be brought by complaint and summons against the personal representative of an estate for the recovery of any claim against the decedent or the decedent's estate, except in the enforcement of claims for injury to

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person or damage to property arising out of negligence as provided in section 1 of this chapter, but the holder thereof, whether such claim be due or not, shall file a succinct definite statement thereof in the office of the clerk of the court in which the letters were issued. The clerk shall send by United States mail or by personal service an exact copy of such statement to the personal representative of the estate. Any claims of the personal representative against the decedent shall be made out and filed in the office of the clerk of the court in which the letters were issued. If any claim against the decedent is founded upon any written instrument, alleged to have been executed by the decedent, the original or a complete copy thereof, shall be filed with the statement, unless it is lost or destroyed, in which case its loss or destruction must be stated in the claim. The statement shall set forth all credits and deductions to which the estate is entitled and shall be accompanied by the affidavit of the claimant or the claimant's agent or attorney, that the claim, after deducting all credits, set-offs, and deductions to which the estate is entitled, is justly due and wholly unpaid, or if not yet due, when it will or may become due, and no claim shall be received unless accompanied by such affidavit. If the claim is secured by a lien on any real or personal property, such lien shall be particularly set forth in such statement, and a reference given to where the lien, if of record, will be found. If the claim is contingent, the nature of the contingency shall also be stated. No statement of claim need be filed as provided in this section as to those claims which are paid by the personal representative within ~~five (5)~~ **three (3)** months after the date of the first published notice to creditors or the period allowed under IC 29-1-7-7. However, in instances where a cause of action was properly filed and commenced against a decedent prior to the decedent's death, the same shall be continued against the personal representative or successors in interest of the deceased, who shall be substituted as the party or parties defendant in such action, and in such instance it shall not be necessary for the claimant to file a claim as herein provided. In any action thus continued the recovery, if any, shall be limited as otherwise provided by law.

SECTION 8. IC 29-1-14-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. If a contingent claim shall have been filed and allowed against an estate, and all the assets of the estate including the fund, if any, set apart for the payment thereof, shall have been distributed, and the claim shall thereafter become absolute, the creditor shall have the right to recover thereon in the court having probate jurisdiction against those distributees whose distributive shares have been increased by reason of the fact that the

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1 amount of said claim as finally determined was not paid out prior to
 2 final distribution, provided an action therefor shall be commenced
 3 within ~~five (5)~~ **three (3)** months after the claim becomes absolute. Such
 4 distributees shall be jointly and severally liable, but no distributee shall
 5 be liable for an amount exceeding the amount of the estate or fund so
 6 distributed to him. If more than one (1) distributee is liable to the
 7 creditor, he shall make all distributees who can be reached by process
 8 parties to the action. By its judgment the court shall determine the
 9 amount of the liability of each of the defendants as between
 10 themselves, but if any be insolvent or unable to pay his proportion, or
 11 beyond the reach of process, the others, to the extent of their respective
 12 liabilities, shall nevertheless be liable to the creditor for the whole
 13 ~~amount~~ **amount** of his debt. If any person liable for the debt fails to
 14 pay his just proportion to the creditor, he shall be liable to indemnify
 15 all who, by reason of such failure on his part, have paid more than their
 16 just proportion of the debt, the indemnity to be recovered in the same
 17 action or in separate actions.

18 SECTION 9. IC 29-1-14-10 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) On or before
 20 ~~five (5)~~ **three (3)** months and fifteen (15) days after the date of the first
 21 published notice to creditors, the personal representative shall allow or
 22 disallow each claim filed within ~~five (5)~~ **three (3)** months after the date
 23 of the first published notice to creditors by making appropriate
 24 notations on the margin of the claim and allowance docket showing the
 25 action taken as to the claim. If a personal representative determines that
 26 the personal representative should not allow a claim in full, the claim
 27 shall be noted "disallowed". The clerk of the court shall give written
 28 notice to a creditor if a claim has been disallowed in full or in part. All
 29 claims that are disallowed, or are neither allowed nor disallowed within
 30 ~~five (5)~~ **three (3)** months and fifteen (15) days, shall be set for trial in
 31 the probate court upon the petition of either party to the claim. The
 32 personal representative shall make an appropriate notation of any
 33 compromise or adjustment on the margin of the claim and allowance
 34 docket. If the personal representative, after allowing a claim and before
 35 paying it, determines that the claim should not have been allowed, the
 36 personal representative shall change the notation on the claim and
 37 allowance docket from "allowed" to "disallowed" and give written
 38 notice to the creditor. If a claim has been paid in full or in part, the
 39 creditor shall:

- 40 (1) release the claim to the extent that the claim has been paid;
- 41 and
- 42 (2) give written notice to the clerk of the court of the release.



1 (b) Claims for expenses of administration may be allowed upon
2 application of the claimant or of the personal representative, or may be
3 allowed at any accounting, regardless of whether or not they have been
4 paid by the personal representative.

5 SECTION 10. IC 29-1-14-16 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. Unless an earlier
7 date is authorized by the judge of the court having jurisdiction of the
8 decedent's estate no proceedings shall be instituted before the end of
9 ~~five (5)~~ **three (3)** months from the death of the decedent to enforce the
10 lien of any judgment rendered against the decedent in his lifetime upon
11 real estate or to enforce any decree specifically directing the sale of
12 such real estate to discharge any lien or liability created or suffered by
13 the decedent, nor shall any suit be brought before that time against the
14 heirs or devisees of the deceased to foreclose any mortgage or other
15 lien thereon; and in case of suit to foreclose any mortgage or other lien
16 thereon, the personal representative shall be made a party defendant
17 thereto; and if the personal representative shall be diligently
18 prosecuting his proceedings to sell the real estate of the deceased for
19 the purpose of making assets to discharge such liens, further
20 proceedings for the sale thereof by the holders of liens thereon shall be
21 stayed, upon the application of the personal representative. This section
22 does not apply to cases where, before the end of the ~~five (5)~~ **three (3)**
23 months, the real estate shall have been sold by the personal
24 representative subject to liens thereon, nor to mortgages and judgments
25 in favor of the state.

26 SECTION 11. IC 29-1-14-18 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18. The personal
28 representative may, if it appears for the best interests of the estate,
29 compromise any claim against the estate, whether due or not due,
30 absolute or contingent, liquidated or unliquidated, but if such claim is
31 not filed such compromise must be consummated within ~~five (5)~~ **three**
32 **(3)** months after the date of the first published notice to creditors. In the
33 absence of prior authorization or subsequent approval by the court, no
34 compromise shall bind the estate.

35 SECTION 12. IC 29-1-14-19 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 19. (a) The personal
37 representative at any time shall pay the claims as the court shall order
38 if the claims are filed within ~~five (5)~~ **three (3)** months after the date of
39 the first published notice to creditors or the period allowed under
40 IC 29-1-7-7, if applicable, and the court may require bond or security
41 to be given by the creditor to refund such part of such payment as may
42 be necessary to make payment in accordance with this title.



(b) Prior to the expiration of ~~five (5)~~ **three (3)** months after the date of the first published notice to creditors or the period allowed under IC 29-1-7-7, the personal representative, if the estate clearly is solvent, may pay any claims that the personal representative believes are just and correct, whether or not the claims have been filed. The personal representative may require bond or security to be given by the creditor to refund any part of the payment as the court may subsequently order. The personal representative, following all such payments, shall include them in the personal representative's next account and they shall be considered proper payments under this title if they are approved by the court as a part of the account.

(c) Upon the expiration of ~~five (5)~~ **three (3)** months after the date of the first published notice to creditors or the period allowed under IC 29-1-7-7 and the final adjudication of all claims filed against the estate, the personal representative shall proceed to pay the claims that have been allowed against the estate in accordance with this title that the personal representative has not paid.

(d) If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good or sufficient cause, the personal representative may report that fact to the court and apply for any necessary order.

SECTION 13. IC 29-1-14-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 21. When any person claims any interest in any property in the possession of the personal representative adverse to the estate, he may file, prior to the expiration of ~~five (5)~~ **three (3)** months after the date of the first published notice to creditors, a petition with the court having jurisdiction of the estate setting out the facts concerning such interest, and thereupon the court shall cause such notice to be given to such parties as it deems proper, and the case shall be set for trial and tried as in ordinary civil actions.

SECTION 14. IC 29-1-16-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. Upon the filing of any account in a decedent's estate, hearing and notice thereof shall be had as follows:

(a) If the account is for final settlement the court or clerk shall set a date by which all objections to such final account and petition for distribution must be filed in writing and the clerk shall give notice to all persons entitled to share in the final distribution of said estate that a final report has been filed and will be acted upon by the court on the date set unless written objections are presented to the court on or before that date. ~~Notice shall further be given by one (1) publication in some newspaper of general circulation, published in the county in~~



1 which the administration is pending. The deadline for filing such
 2 objections shall be at least fourteen (14) days prior to the date set for
 3 hearing and the notice shall state that any objections to such final
 4 account and petition for distribution must be filed in writing before
 5 such date. The personal representative shall at the time said account is
 6 filed furnish to the clerk the names and addresses of all persons entitled
 7 to share in the distribution of the residue of said estate, whose names
 8 and addresses are known to the personal representative or may by
 9 reasonable diligence be ascertained as set forth in the personal
 10 representative's petition for distribution, together with sufficient copies
 11 of said notice prepared for mailing. The clerk shall send a copy of said
 12 notice by ordinary mail to each of said parties at least fourteen (14)
 13 days prior to such date. Said parties or their attorney of record may
 14 waive the service by mail of this notice and where there is an attorney
 15 of record, service upon said attorney shall be sufficient as to the parties
 16 represented by said attorney. ~~Filing for such waivers shall not change~~
 17 ~~the requirement for notice by publication. Neither a notice nor a~~
 18 **hearing is required if all persons entitled to share in the final**
 19 **distribution of the estate waive the service of notice by mail and**
 20 **consent to the final account and petition for distribution without a**
 21 **hearing.**

22 **(b) If a person entitled to share in the distribution of the residue**
 23 **of the estate is unknown or cannot be located, notice may be given**
 24 **by one (1) publication in some newspaper of general circulation,**
 25 **published in the county in which the administration is pending. The**
 26 **deadline for filing an objection must be at least fourteen (14) days**
 27 **before the date set for hearing, and the notice must state that any**
 28 **objections to the final account and petition for distribution must be**
 29 **filed in writing before that date.**

30 ~~(b)~~ (c) If the account is intermediate, but the personal representative
 31 has therein petitioned the court that said account be made final as to the
 32 matters and things reported in said account, the same procedure as to
 33 hearing and notice shall be followed as in the case of a final account.

34 ~~(c)~~ (d) If the account is intermediate and the personal representative
 35 makes no request that said account may be made final as to the matters
 36 and things reported in said account, the court may order such notice as
 37 the court deems necessary or approve the same ex parte and without
 38 notice. Every such intermediate account approved without notice shall
 39 be subject to review by the court at any time and shall not become final
 40 until the personal representative's account in final settlement is
 41 approved by the court.

42 SECTION 15. IC 29-3-2-4 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) All findings,
2 orders, or other proceedings under this article shall be in the discretion
3 of the court unless otherwise provided in this article.

4 (b) If there is **not** a conflict of interest between a guardian of an
5 estate and the **protected** person, ~~whose estate is controlled by the~~
6 ~~guardian~~; or among persons represented, orders binding a guardian of
7 an estate bind the **protected** person. ~~whose estate the guardian~~
8 ~~controls~~.

9 (c) Orders binding a guardian **of the person** bind the ~~ward~~
10 **protected person** if a guardian of the ~~ward's~~ **protected person's** estate
11 has not been appointed.

12 SECTION 16. IC 29-3-3-1 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Any person
14 indebted to a minor or having possession of property belonging to a
15 minor in an amount not exceeding ~~five ten~~ thousand dollars ~~(\$5,000)~~
16 **(\$10,000)** may pay the debt or deliver the property without the
17 appointment of a guardian, giving of bond, or other order of court
18 directly to any person having the care and custody of the minor with
19 whom the minor resides.

20 (b) Persons receiving property for a minor under this section are
21 obligated to apply the property to the support, use, and benefit of the
22 minor.

23 (c) This section does not apply if the person paying or delivering the
24 property knows that a guardian has been appointed for the minor or that
25 proceedings for appointment of a guardian for the minor are pending.

26 (d) A person who pays or delivers property in accordance with this
27 section in good faith is not responsible for the proper application of that
28 property.

29 SECTION 17. IC 29-3-8-6 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. If:

31 (1) a guardian sells or transfers during a protected person's
32 lifetime property belonging to the protected person that is
33 specifically devised to another in a will executed by the protected
34 person; ~~before the protected person became an incapacitated~~
35 ~~person~~;

36 (2) the protected person subsequently dies; and

37 (3) the devised property is consequently not contained in the
38 protected person's estate following the death of the protected
39 person;

40 the devisee may, at the devisee's option, elect to receive the value of the
41 devised property, as valued at the time of death of the protected person,
42 as a general devise or the proceeds of the sale or transfer as a specific

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1 devise.

2 SECTION 18. IC 30-1-5-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Every executor,
4 administrator, guardian, trustee, receiver or other fiduciary shall have
5 the power, in such capacity, to invest in the following:

6 (1) Obligations issued pursuant to the provisions of the Federal
7 Home Loan Bank Act (12 U.S.C. 1421 et seq.), as in effect on
8 December 31, 1990, and in obligations issued by the FSLIC
9 Resolution Fund.

10 (2) Life, endowment, or annuity contracts of legal reserve life
11 insurance companies duly licensed by the insurance
12 commissioner for the state of Indiana to transact business within
13 the state. The purchase of contracts authorized by this subdivision
14 shall be limited, however, to executors or the successors to their
15 powers when specifically authorized by will, to guardians on
16 authorization of the court having probate jurisdiction over the
17 guardianship, and to trustees. Such contracts may be issued on the
18 life or lives of a protected person or persons, a beneficiary or
19 beneficiaries of a trust fund, or according to the terms of a will, or
20 upon the life or lives of persons in whom the protected person or
21 beneficiary has an insurable interest. Life or endowment or
22 annuity contracts may be purchased by trustees in the absence of
23 an express prohibition against such purchase contained in the
24 instrument creating the trust. ~~However, a~~ **The trustee may not**
25 ~~expend in trust income and principal to pay~~ annual premiums
26 for contracts authorized by this subsection ~~an amount in excess of~~
27 ~~twenty-five percent (25%) of the trust income for the calendar~~
28 ~~year immediately preceding the date of purchase, unless a greater~~
29 ~~amount is authorized subject, however, to limitations that are:~~

30 **(A) imposed** by the court having probate jurisdiction over the
31 trust; or

32 **(B) is** expressly authorized in the trust instrument.

33 In the absence of express provision in the trust instrument to the
34 contrary, the trustee, as trustee, shall possess all the incidents of
35 ownership in contracts so issued and the trustee as trustee, or the
36 beneficiary or beneficiaries of the trust shall be the beneficiary or
37 beneficiaries of such contracts.

38 (3) Obligations of the federal government, or any federal agency
39 or instrumentality, whenever a governing instrument or order
40 directs, requires, authorizes, or permits investment in such
41 obligations, either directly or in the form of securities of, or other
42 interests in, any open end management type investment company



or investment trust registered under the provisions of the Investment Company Act of 1940 (15 U.S.C. 80a et seq.), as in effect on December 31, 1990. However, the portfolio of the investment company or investment trust must be limited to obligations of the federal government or any federal agency or instrumentality, and to repurchase agreements fully collateralized by such obligations to which obligations the investment company or investment trust takes delivery either directly or through an authorized custodian.

SECTION 19. IC 34-45-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) This section applies to suits or proceedings:

- (1) in which an executor or administrator is a party;
 - (2) involving matters that occurred during the lifetime of the decedent; and
 - (3) where a judgment or allowance may be made or rendered ~~for~~ ~~or~~ against the estate represented by the executor or administrator.
- (b) Except as provided in subsection (c), **(d), or (e)**, a person:

- (1) who is a necessary party to the issue or record; and
 - (2) whose interest is adverse to the estate;
- is not a competent witness as to matters against the estate.

(c) In cases where:

- (1) a deposition of the decedent was taken; or
 - (2) the decedent has previously testified as to the matter;
- and the decedent's testimony or deposition can be used as evidence for the executor or administrator, the adverse party is a competent witness as to any matters embraced in the deposition or testimony.

(d) This section does not apply in:

- (1) a proceeding to contest the validity of a will; or**
- (2) a proceeding to contest the validity of a trust.**

(e) This section does not apply in any proceeding after the adverse party has made a prima facie case by other evidence.

SECTION 20. [EFFECTIVE JULY 1, 1999] **The following statutes, all as amended by this act, apply to the estate of an individual who dies after June 30, 1999:**

- (1) IC 29-1-4-1.**
- (2) IC 29-1-7-7.**
- (3) IC 29-1-7-7.5.**
- (4) IC 29-1-7-17.**
- (5) IC 29-1-7.5-4.**
- (6) IC 29-1-14-1.**
- (7) IC 29-1-14-2.**



- 1 (8) IC 29-1-14-8.
- 2 (9) IC 29-1-14-10.
- 3 (10) IC 29-1-14-16.
- 4 (11) IC 29-1-14-18.
- 5 (12) IC 29-1-14-19.
- 6 (13) IC 29-1-14-21.
- 7 (14) IC 29-1-16-6.

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